SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-015988 01/14/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

EDWARD CILKE

EDWARD CILKE
20920 N 80TH AVE
PEORIA AZ 85382-0000

v.

STEVE BIERMAN, et al.

VINCENT M CRETA

PHX JUSTICE CT-CENTRAL
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This Court has taken this case under advisement, heard oral arguments, considered the Memoranda of the parties and the exhibits of record, and reviewed the ruling of the Central Phoenix Justice Court.

The only issue in this civil appeal is whether the Central Phoenix Justice Court's granting of Steve and Nancy Bierman's motion for summary judgment was proper.

Appellant, Edward Cilke, filed an action in the Central Phoenix Justice Court seeking treble damages for past wages from his employer, Infonet of Phoenix, Inc., pursuant to A.R.S. Section 23-353. Appellant Cilke also named as Defendants, Steve and Nancy Bierman, officers of Infonet of Phoenix, Inc. The Biermans, Appellees herein, filed a Motion for Partial Summary Judgment with the trial court. The Biermans asserted that Infonet of Phoenix, Inc., was a separate corporation, with bylaws, a statutory agent, had filed corporate tax returns, obtained a federal employer identification number, and maintained separate commercial bank accounts and leased offices so as to constitute a separate and distinct business entity from its officers (the Biermans). Appellant Cilke asserted that Infornet of Phoenix, Inc., was a sham corporation and

constituted the alter ego of the Biermans. Cilke contended that the Biermans were personally liable for his back wages. The trial judge agreed with Appellees and granted the Motion for Partial Summary Judgment. From that order, Appellant Cilke appeals. In his brief Appellant contends that Infonet of Phoenix was undercapitalized and operated as the alter ego of the Biermans. Appellant also contends that necessary evidence to support his claim was withheld from him in his discovery request by the Biermans. Appellant does not specify as to what that information is, and the record discloses that Appellant has never filed a motion to compel discovery.

The law in Arizona is well settled that summary judgment is appropriate only where there are no genuine issues of material fact, and one party is entitled to judgment, as a matter of law.[1] But, summary judgment is inappropriate unless the facts are clear and undisputed.[1] motions for summary judgment pursuant to Rule 56, Arizona Rules of Civil Procedure, are not designed to resolve factual issues. Where there is the slightest dispute as to the facts, a motion for summary judgment should be denied by the trial judge.[2]

Appellant argues that the Bierman Group is simply the *alter ego* of Infonet[2]. Appellant seeks to substantiate that argument by arguing that (1) Appellees are the sole officers and directors of the Bierman Group, (2) Appellees solely own and direct six other companies incorporated under the laws of Louisiana and operate out of the same address in Baton Rouge, (3) that the Bierman Group was "obviously undercapitalized" based on the abrupt closing of its Phoenix office and its failure to fully pay employees, and (4) that the Bierman Group did not maintain its corporate form of business because of its failure to follow corporate formalities under the law.[3]

The mere fact that a corporation's stock is owned by only a few persons does not necessarily mean that corporate debts should be imposed on them.[4] Ownership by only a few family members is an arrangement that persists among closely-held corporations. And if – as Appellant alleges – Appellees own and direct six other companies incorporated under the laws of Louisiana and operating out of the same address in Baton Rouge, and Appellant so far has not shown that that constitutes any fraud or impropriety. More than a mere showing of unity of ownership or interest by the individuals in a corporation is needed to permit penetration of the corporate veil.[5]

This Court concludes that the trial judge properly determined there were no issues of material fact, and that Appellees were entitled to judgment as a matter of law because of the failure of Appellant Cilke to raise any facts, other than mere argument or supposition, that would support

---

[4] Fire Insurance Exchange v. Beray, 143 Ariz. 429, 694 P.2d 259, approved as modified, 143 Ariz. 361, 694 P.2d 191 (App. 1983).
[1] Colby v. Bank of Douglas, 91 Ariz. 85, 370 P.2d 56 (1962).
[5] See City of Phoenix v. Space Data Corporation, 111 Ariz. 528, 534 P.2d 428 (1975).
[12] Appellant's memorandum, p. 4.
[13] Appellant's memorandum, pp. 4-5.
[18] Dietel v. Day, 16 Ariz.App. 206, 492 P.2d 455.
[19] Cooper v. Industrial Comm'n, 74 Ariz. 351, 249 P.2d 142.

his claim that Infonet of Phoenix, Inc., was the alter egos of the Biermans. No such facts were alleged by Appellant, and the trial judge correctly granted the Motion for Partial Summary Judgment filed by Appellees.

IT IS THEREFORE ORDERED affirming the judgment of the Central Phoenix Justice Court.

IT IS FURTHER ORDERED remanding this case to the Central Phoenix Justice Court for further and future proceedings in this case.